(2)
Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

Robert H. Sarvis

v.

Barbara E. Hathaway

On Petition For Writ Of Certiorari
To The Maine Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

Robert H. Sarvis, Pro se
9 Houghton Point South
N. Swanzey, NH 03431
603-540-4882
603-358-5139

QUESTION PRESENTED

1. Is an agreement entered into by the parties in settlement of their divorce, but not presented to the divorce court or incorporated into the divorce decree enforceable?

2. Did the decisions of Maine Supreme Judicial Court violate the Sarvis' 5th and 14th Amendment right to equal protection under law?

PARTIES TO THE PROCEEDINGS BELOW

All parties to the proceedings below are named in the caption of this matter.

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OPINIONS BELOW

The opinion of the Maine Supreme Judicial Court, Decision No. Mem 06-25, Docket No. Cum-05-341 up holding the District Court decision appears in Appendix A to this petition and is unpublished.

The decision of the Ninth District Court Docket No. POR-96-DV-0365 appears in Appendix B to this petition and is unpublished. (Submitted in relevant part.)

The divorce judgment Barbara E. Hathaway v. Robert H. Sarvis, Docket No. 96-DV-035 appears in Appendix C to this petition and is unpublished.

JURISDICTION

The Supreme Judicial Court of the State of Maine entered its decision on February 9, 2006.

This Court has jurisdiction under to 28 USC § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S. Constitution, Article 1 § 10, provides in pertinent part: "No state shall . . . pass any . . . Law impairing the Obligations of Contracts . . ."

The U.S. Constitution, Amendment V, provides in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law ..."

The U.S. Constitution, Amendment XIV, provides in pertinent part: "nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

SUMMARY OF CASE

This case involves the enforceability of a divorce settlement agreement (Appendix D, page 9a) (the "Agreement") between Robert H. Sarvis ("Sarvis") and Barbara E. Hathaway ("Hathaway") made outside of the divorce count and not incorporated in the divorce decree. Maine courts found because the Agreement was not incorporated in the Divorce Judgment it was unenforceable in violation of Article 1 of the U.S. Constitution.

Maine is an equitable distribution state and the decision of the Maine Supreme Court in this case is in direct conflict not only with the law regarding equitable distribution as stated by Maine law, but also with its own decisions. Thus, Sarvis' V and XIV Amendment rights to equal protection under law has been violated.

STATEMENT OF THE CASE

Sarvis and Hathaway were married for two months. All of the property in question was owned by Sarvis prior to the marriage or was his inheritance. The decision of the District Court was made without an evidentiary hearing and was based upon its interpretation of the law: that a contract made in contemplation of divorce, but not presented to the divorce court or incorporated into the divorce decree is unenforceable. It also disregarded Maine law and its own decisions relative to property interests in a divorce.

Hathaway and Sarvis were married in January 1995, two-months before Sarvis was incarcerated in Pennsylvania. At all times, Hathaway knew Sarvis would be incarcerated in April 1995. Shortly thereafter Hathaway sued for divorce. Sarvis objected.

After almost a year and a half Hathaway proffered the Agreement (Exhibit D, page 9a), conditioned on Sarvis' withdrawal of his objection to the divorce. They agreed and she forwarded the Agreement to Sarvis' son and in compliance with the Agreement Sarvis withdrew his objection to the divorce. It proceeded and a divorce decree issued. (Appendix C, page 7a) The Agreement was neither presented to the divorce court nor was it merged or incorporated into the divorce decree.

After Sarvis was released from prison, approximately fourteen months after the divorce Agreement and Divorce Decree, Hathaway performed minor parts of the Agreement, but in general breached it by not returning his personal property and his inheritance. Sarvis' personal property was substantial, valued in excess of $200,000, including $47,000 of inheritance that Hathaway had, without Sarvis' knowledge or consent, forged his signature, cashed it and spent the funds, while he was in prison. Hathaway had repeatedly promised to perform and did as far as paragraphs 3, 4, and 5 (Appendix D, pages 9a and 10a) from November 1998 until July 2002 while asking Sarvis to forbear. Finally, Sarvis ceased to forbear and brought an action in Maine Superior court for breach of contract and conversion. That was dismissed and upheld by the Maine Supreme Court as to forum and as a result he brought it to the District Court. At all times his action was brought within the 6-year statue of limitations for contracts and at no time did Hathaway claim statue of limitations as an affirmative defense.

When Sarvis tried to enforce the Agreement and recover his personal property, automobiles, and his inheritance the Maine Supreme Judicial Court upheld (Appendix A, page 2a) the District Court's decision that the Agreement was unenforceable -- - void because in had not been incorporated in the divorce decree (Appendix B, page 5a).

REASONS FOR GRANTING THE PETITION

I. Settlement Agreement Valid Contract

Hathaway got the benefit of her bargain (Appendix D, page 9a - paragraphs 1 and 6). Sarvis withdrew his objection to the divorce and various claims against her in exchange for her storing and returning "all" his personal property upon his release from prison (paragraph 2) and the provisions of paragraphs 3, 4, and 5. (Appendix D, pages 9a and 10a). Hathaway performed paragraphs 3 (performed in July 2002), 4, 5, while at the same time asking for Sarvis' forbearance relative to paragraph 2.

But for the Agreement Sarvis would not have withdrawn his objection to the divorce. He had no way of knowing that Hathaway would not perform the Agreement until he was released from prison some fourteen months after the divorce decree issued, well after the appeal period had run. He relied and had a constitutional right to rely on contract law to protect his property and contract interests as set forth in the Agreement. By her not performing the Agreement Sarvis was fraudulently induced into giving up his rights in the Divorce Court.

The Agreement did not need to be presented to, incorporate or merged into the divorce decree to be valid and enforceable. All states, Federal courts, and all authorities that have addressed the issue of the validity and enforceability of a settlement agreement not embodied in the divorce decree have come to the same conclusion:

- "The fact that the agreement that the agreement is not embodied in the divorce decree . . . does not render it invalid." 24 Am Jur 2d § 1121.
- The "fact that the agreement has not been made a part of the permanent records of the court does not render them invalid." Am Jur 2d § 1121.
- "A property settlement . . . which is not incorporated and merged in the divorce decree remains in effect after the decree

and the property rights of the parties rest on, and are governed by, the agreement and not by the decree." 27 C.J.S. § 574, 576

Federal Courts have found jurisdiction when a settlement agreement is not incorporated in the divorce decree, thus confirming the validity and enforceability of an agreement made outside the divorce decree. *Schoonover v. Schoonover*, C.A. Okl., 172 F.2d 526 (10th Cir.) ("In laying down the general principles of law, the court said . . . we hold that the contract of settlement in the divorce case between W. T. Meadors and defendant was not merged into nor extinguished by the decree of divorce rendered in that action, . . . was valid and binding upon the parties); and *Hood v. Hood*, 335 F.2d 585 (10th Cir).

The Maine District Court found exactly the opposite: "[T]he settlement agreement was never incorporated within the divorce judgment." (See Appendix, page 5a). And therefore, it concluded the divorce decree overrode and set aside the Agreement.

Despite the fact that the enforcement of the settlement agreement was the cornerstone of Sarvis' appeal (Appendix E, page 11) the Maine Supreme Court never addressed the issue of the enforceability of the Agreement (Appendix A, page 1a). They upheld the District Court in a memorandum opinion that never mentioned or addressed Sarvis' motion for enforcement of the settlement agreement.

As a result Maine stands alone in its decision that a settlement agreement must be incorporated in the divorce decree or it is unenforceable. The decision of the District Court upheld by the Maine Supreme Judicial Court violates Sarvis' Constitutional rights under Article 1 § 10 of the United States Constitution.

This Court has never addressed this particular issue. If it denies this Petition for Certiorari the State of Maine will stand in violation of the U.S. Constitution and the Maine Supreme Judicial Court has, in effect, determined that Maine divorce law overrides and impinges on the obligations of contracts. This

Court should not allow that conclusion of law to stand for it clearly violates Sarvis' Constitutional rights.

II. Maine Denies Sarvis Equal Protection Under Law

Furthermore, the decision of the Maine Supreme Court (Appendix A, page 2a) is in direct conflict with Maine law and it own prior decisions.

Maine law precludes Sarvis from being deprived of his property as a result of marriage (19A – A.M.R.S. § 802 (2003) – "[a] person having property is not deprived of any part of that property by marriage"). Yet that is exactly what happened.

It defines martial property as property acquired subsequent to the marriage and excludes inheritance from marital property (19A – A.M.R.S. § 953 (2003)). It is undisputed that Sarvis owned all of his personal property, his automobiles titled to him, prior to the marriage. While his $47,000 inheritance check was fraudulently cashed by Hathaway subsequent to the marriage, it was never property of the marriage.

Not only did the Maine Supreme Court completely disregard Maine statues and its standing as an equitable distribution state, it also disregarded its own decision in *Salenius v. Salennius*, 654 A.2d 426 (Me. 1995) where it concluded:

> Maine is an equitable distribution state, and not a community property state. One of the principle differences between the two is the nature of the spouse's interest in property to which the other spouse holds title . . . In an equitable distribution state such as Maine, each spouse retains sole interest in property held in his or her name, subject to the right of the other spouse to equitable distribution. Thus, legal title to property remains unaffected by a divorce judgment that failed to set it apart. (Emphasis added). *Salenius, supra*.

In *Salenius* the Court concluded that Richard Salenius' pension had not be specifically delineated in the divorce

settlement agreement and therefore remained his. Well, neither was Sarvis' inheritance, his automobiles, or his other property called out and listed by the Divorce Decree as Richard Salenius' other property had been.

Hathaway repeatedly reminded the various Maine Courts of Sarvis' criminal history and that he represented himself. The decisions of the Maine courts indicates that they were prejudiced by the fact that Sarvis had a criminal history and was presenting his case pro se and thus ruled unfairly against him and not in accordance with law.

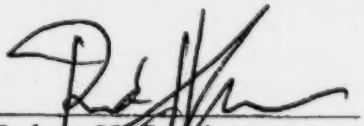
Why didn't the Maine Supreme Judicial Court address the contract issue even though it was thoroughly briefed and the centermost argument of Sarvis? To do so would have meant they either had to enforce the Agreement or violate the U.S. Constitution. Thus, they did neither. It was an intentional avoidance.

The Maine Supreme Court by not upholding Maine Law and completely ignoring its own decision regarding equitable distribution and by purposefully avoiding a decision relative to the enforceability of the Agreement denied Sarvis equal protection under law in violation to his Fifth and Fourteenth Amendment rights.

CONCLUSION

For the above reasons the petition for a Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED, this the 28 day of April 2006.



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APPENDIX A

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision No. Mem. 06-25
Docket No. Cum-05-341

BARBARA E. HATHWAY
v.
ROBERT H. SARVIS

Submitted on Briefs December 13, 2005
Decided February 9, 2006

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER CALKINS, and LEVY, JJ.

MEMOANDUM OF DECISION

Robert H. Sarvis appeals form the judgment of the District Court (Portland, *Powers, J.*), denying two post judgment motions related to a 1997 divorce judgment. Contrary to Sarvis' contentions, the court appropriately denied Sarvis' motion for post-judgment relief, filed pursuant to M.R. Civ. P 80(k), because the 1997 divorce judgment is unambiguous. *See Thompson v. Rothman* 2002 ME 39, 6-7, 9 791, 923-24; *MacDonald v. MacDonald*, 582 A.2d 976, 977 (Me. 1990); *Merrill v. Merrill*, 449 A.2d 1120, 1124-25 (Me. 1982). The court also acted within its discretion when it denied Sarvis' motion for relied from
judgment, filed pursuant to M.R.Civ. P. 60(b), because Sarvis did not demonstrate any relief form the court's 1997 divorce judgment to which he was entitled. *See Thorne v. Leask*, 2004 ME 145, 7, 861 A.2d 690, 691; *Sargent v. Sargent*, 1997 ME 38, 11-13, 691 A.2d 184, 187-88; *Salenius v. Salenius*, 654 A.2d 426, 427-30 (Me. 1995); *Meiners v. Aetna Cas. & Sur.*

Co., 663 A.2d 6, 8 (Me. 1995); *Grishman v. Grishman*, 407 A.2d 9, 11). Moreover, Sarvis was not denied due process. *See Ficher v. Bd. Of Envtl. Prot.*, 604 A.2d 433, 436-37 (Me. 1992).

The entry is: Judgment Affirmed.

APPENDIX B

{SUBMITTED IN RELEVANT PART}

STATE OF MAINE
CUMBERLAND, ss.

NINTH DISTRICT COURT
PORTLAND
DOCKET NO. POR-96-DV-035

BARBARA E. HATHAWAY,
Plaintiff

v.

ORDER

ROBERT H. SARVIS,
Defendant

This court held a motion hearing on May 17, 2005 concerning the Defendant's post-judgment motion to vacate divorce judgment and Defendant's motion to clarify and for enforcement of settlement agreement. They both were filed in February 2005.

Plaintiff filed a timely opposition to the motions. At the time of the motion hearing, the Defendant also filed a motion for discovery, dated May 17, 2005, and Plaintiff filed a timely opposition. Plaintiff appeared, representing himself, and the Defendant appeared through attorney Peter Cary.

The parties were married on January 29, 1995 and divorced by decree dated September 29, 1997. The divorce was a very basic decree entered on an uncontested basis. The Defendant had written the clerk, indicating that he was withdrawing any objection to the divorce. The Defendant was in federal prison from 1995 to 1998 though he had been served with
the divorce complaint and had counsel representing him during a portion of the proceedings. He does not claim to have failed

to receive a copy of the final judgment. No appeal was filed by either party.

In 2003, the Defendant filed in a Superior Court action for breach of contract and conversion against the Plaintiff. Superior Court construed this matter as a matter requiring a post-judgment divorce filing and the Law Court agreed by memorandum decision of January 11, 2005. The Defendant then filed the above post-judgment motions. . . .

{OMITTED SECTION}

To the extent that the Defendant asserts that the Court has to make an independent investigation of the non-marital property, that allegation is incorrect. Grishman v. Grishman, 407 A.2d 911 (Me. 1979) does indicate that the court shall determine marital versus non-marital property, set aside the non-marital property, and divide the marital property as required by 19A M.R.S.A. § 953. If no party brings to the court's attention that here is non-marital versus marital property issue, the court certainly does not have the obligation on its own to undertake some investigation of that issue. Neither the Defendant nor the Plaintiff indicated there was such an issue based on the record, and in fact the Defendant had notified the court by letter dated August 27, 1997 that he no longer object to the divorce and that the matter should proceed to be finalized. He stated he "withdrew his objection to the divorce and no longer contests its finality. He withdraws his request for a stay and his demand for a hearing. He wishes that the Court issue whatever is necessary to finalize the divorce." Defendant never appealed and waited almost seven and a half years to raise this issue before the divorce court.

As to the request to enforce the settlement agreement, the settlement agreement was never incorporated within the divorce judgment. Defendant received a copy of the divorce judgment, which does not mention the so-called settlement agreement at all. Again, he waited almost seven and a half

years to request that the court take some action to enforce the alleged agreement. The August 27 letter to the court does not make mention of any existing settlement agreement and does not request that the court take any action whatsoever in regard to same. Divorce Courts have the authority to determine whether to enforce proposed settlement agreements at the time of the divorce as noted in Thorne v. Leask, 2004 ME 145, 7, 861 A.2d 690. 696. Defendant has waited too long to ask the divorce court to deal with a proposed settlement agreement, which was to have been dealt with at the time of the 1997 hearing . . .

{OMITTED SECTION }

In conclusion, in light of the above, the court denies the Defendant's motion to vacate judgment and the Defendant's motion to clarify judgment and enforce settlement agreement. The court dismisses the Defendant's motion for discovery as moot in lights of the ruling that both post-judgment motions are denied.

The clerk shall incorporate this Order on the docket by reference under Ruel 79(a).

DATED: June 21, 2005

"s/ K A Powers"
Keith A. Powers, Judge
Maine District Court

APPENDIX C

STATE OF MAINE
Cumberland, ss
Cumberland

DISTRICT COURT
Division of So.

Docket No. 96-DV-035

BARBARA HATHAWAY
Plaintiff

vs.

DIVORCE JUDGMENT

ROBERT SARVIS
Defendant

Notice of the pendency of this action for divorce has been duly and seasonably given according to law. Pending is Plaintiff's complaint for divorce. A hearing was held on September 29, 1997. Plaintiff appeared in person without counsel. Defendant, who has notice, did not appear. Based on the evidence presented, it is ORDERED that:

1. DIVORCE. Plaintiff is granted a divorce from Defendant on the ground of irreconcilable differences as claimed in Plaintiff's complaint.

2. CHILDREN OF THE PARTIES. The parties have no children born of their marriage.

3. ALIMONY. Neither party shall pay alimony to the other.

4. PERSONAL PROPERTY. Except as otherwise set forth in this Judgment, each party has in his and her respective possession the remaining personal property each wants. Accordingly, such remaining personal property is ORDERED set
aside and awarded to the party in whose possession such property reposed on the date of the hearing, set forth above, and such party shall be solely responsible for any indebtedness thereon and shall indemnify and hold the other party harmless therefrom.

5. REAL PROPERTY. There is no marital real property.

6. LIABILITY FOR DEBTS. Except as otherwise set forth in this Judgment, each party is solely responsible for any debt(s) in his or her name and any debt(s) on the property awarded to that party in this Judgment and shall indemnify and hold the other party harmless from such debt(s).

7. DOCKET ENTRY. Pursuant to Rule 79(a) M.R.Civ.P., the Clerk is directed to enter this Divorce Judgment on the Civil Docket by a notation incorporating it by reference.

Dated: September 29, 1997

"s/ Joyce A. Wheeler"
Joyce A. Wheeler
Judge, District Court

APPENDIX D

Barbara E. Hathaway
163 Danforth Street
Portland, ME 04102

Robert H. Sarvis
C/o Robert A. Sarvis
3736 North Fremont Street #2
Chicago, IL 60613

Dear Bob,

This letter will memorialize our conversation of yesterday's date.

It feels like a peaceful conclusion to a very hard journey for both of us. I hope you feel relief. I do. I believe for the first time in a long time that we probably will be friends.

We have agreed to the following terms in full settlement of our divorce.

1. You will withdraw your objections to the divorce, and make no demand for alimony, or Winter Danforth Corporation, abd The Danforth, or 163 Danforth Street.

Based on our conversation of this morning you will have put a letter to the court in the mail today withdrawing your objection.

2. I will store all you personal property until you are released from prison.
3. I will assign/transfer ownership to the 47 foot ACF, known as Dame Edna, to your son, Robert A. Sarvis.
4. I will not make or pursue any further claim against the Sarvis vs. Boston Safe judgment, it is my hope that the 20% will be to your benefit.

5. You have agreed to take care of the debt to Aunt Vi and Helen.

Please let me know where you are. Please stay healthy and safe.

"s/ _____"

Barbara E. Hathaway
163 Danforth Street
Portland, ME 04102
207 879 8755

Dear Bob –
Thank you – you
like the Ali McGraw
movie –
Barb

BEST AVAILABLE COPY

APPENDIX E

Appeal Brief of Robert H. Sarvis to Maine Supreme Judicial Court (in relevant part)

Statement of the Issues

1. Did the District Court err when it set aside the Sarvis / Hathaway property settlement agreement?
2. Did the District Court err when it found that a property settlement agreement entered into by the parties, but not presented to the Divorce Court or incorporated into the divorce decree, is unenforceable?
3. Did the District Court err when it found Sarvis was time barred from enforcing the settlement agreement? . . .

{OMITTED SECTION}

Statement of the Case

First and foremost this is contract case stemming from a divorce. After a two-month marriage (January 25, 1995 to April 4, 1995) Robert H. Sarvis ("Sarvis") and Hathaway ("Hathaway") came to a verbal settlement agreement, confirmed in writing by Hathaway (the "Agreement") (Exhibit C – App. 59). This Agreement was not presented to the Divorce Court, nor was it merged or incorporated in the divorce decree. Sarvis fulfilled his side the bargain, while Hathaway did not. Sarvis first sought to enforce the Agreement through a contract suit in Superior Court. It was dismissed because of lack of jurisdiction, which was up held by this Court on appeal.[1]

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[1] Superior Court case CV-2003-456 and appeal case CUM-04-331.

As a result Sarvis brought an 80K post judgment motion to enforce the Agreement. At the same time Sarvis asked the District Court to interpret the wording of the divorce decree and moved, in the alternative, to have the Court void the judgment on jurisdictional, civil rights, and equitable grounds.

The case involves Sarvis' personal property (Exhibit B- App. 58) plus two automobiles, all owned and titled to him prior to the marriage plus $47,000 of inheritance stolen by Hathaway by forging Sarvis' signature on his inheritance check and depositing the proceeds into her account (Exhibit A – App. 46, 55, 56).

The divorce decree entered on September 29, 1997 only after Sarvis withdrew his objection to the divorce in fulfillment of his part of the Agreement.

Subsequent to the divorce decree Hathaway performed several conditions of the Agreement and sought Sarvis' forbearance of litigation through July 2002.

During the time of Sarvis' incarceration (April 4 1995- August 26, 1998) Hathaway stored Sarvis' personal property at her inn. . . .

{ OMITTED SECTION }

V. Argument

A. The Standard of Review

This court reviews the District Court's decision according to the de novo standard. *Desjardins v. Desjardins*, 2005 ME 77.

B. The Settlement Agreement Is Enforceable Against Hathaway

Judge Powers found that a settlement agreement must be incorporated in the divorce decree.[2] This Court has never addressed the issue of weather a settlement agreement not presented the divorce court or incorporated or merged into the divorce decree is enforceable. However, in *Weber v. Allen*, 574 A.2d 1362, 1364 (Me. 1990) where Allen contended that his wife breached an agreement never presented to or incorporated into the divorce judgment this court said: "Allen may seek to enforce the terms of that collateral agreement," but did not express an opinion as to enforceability. *Allen, supra.*

Sarvis has sought to enforce the Agreement first in the Maine Superior Court (CV-2003-456) and after this Court ruled his case was brought in the wrong jurisdiction (CUM-04-33)[3] he moved the District Court to enforce his agreement via his post-judgment motion.

1) The Agreement is a Contract

The Agreement sets forth promises (paragraphs 2-5 of the Agreement – Exhibit C – App. 58) of Hathaway in exchange for Sarvis' withdrawal of his objection to the divorce and

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[2] Judge Powers relies on *Thorne v. Leask*, 2004 ME 145, but this case deals with the right to incorporate the settlement agreement into the divorce decree at the time of the decree. What is at issue here is quite different. In this case, Sarvis and Hathaway made an agreement and never brought the issue to the divorce court. The question is: "Is a settlement agreement not incorporated in the divorce decree enforceable as a contract between Sarvis and Hathaway?"

[3] All States and authorities that have addressed the enforcement of a settlement agreement not presented to the divorce court have agreed that it be sued upon "in an independent action in contract." (Emphasis added.) 27 C C.J.S. § 576 citing: *Schoonover v. Schoonover*, C.A. Okl. 172 F.2d 526; *Tieso v. Tieso*, 155 P.2d, *Friedlander v. Friendlander*, 463 A.2d 587; *Marshall v. Marshall*, 355 N.W.2d 661; *Smith v. Smith*, 51 N.W.2d 276. And the Federal Courts find jurisdiction when a settlement agreement is not incorporated in the divorce decree. *Schoonover v. Schoonover*, 172 F.2d 526 (10th Cir.), and *Hood v. Hood*, 335 F.2d 585 (10th Cir.) Maine stands alone requiring enforcement through the divorce court (*Sarvis v. Hathaway*, CUM-04-33).

withdrawal of his claims against Hathaway and the Danforth Inn (paragraphs 1 and 6 of the Agreement - Exhibit C – App. 58). Thus, the basic requirements of a contract – promise and consideration -- are met. Furthermore, in *Coe v. Coe*, 145 Me. 71, 74, this Court established a test for a valid settlement agreement. It must "contemplate a possible divorce" and expresses an intent that it "remain in full force and effect thereafter." Authorities agree: "property settlement agreements in contemplation of divorce are contracts, they are construed and interpreted in accordance with the rules governing contracts generally." 27 C C.J.S. § 576. "Property settlement agreements . . . between spouses entered into in contemplation of divorce are favored by the courts . . ." Am Jur 2d. § 1108.

The Agreement does both:

> "We have agreed to the following terms in full settlement of our divorce" [and] "I will store all your personal property until you are released from prison." (Emphasis added.) (Exhibit C – App. 59)

The Agreement is dated August 26, 1997. Hathaway knew Sarvis would not be released until 1998 (See Hathaway Note – Exhibit D – App. 60): "Michelle, at Lewisburg says 3/10/98 is your last day.") Therefore, Hathaway, when she drafted the Agreement (App. – 81) , both contemplated divorce and expected the Agreement would remain in effect subsequent to the divorce decree. This Court states: "an agreement reached prior to trial does represent a method by which the parties may identify matters that are not disputed and by which the parties may be assured that those matters will not be subject of [the divorce] litigation. Thus, in the normal course, the court should honor an agreement reached by the parties." (Emphasis added.) *Cloutier v. Cloutier*, 2003 ME 4, 814 A.2d 979 and see *Coe v. Coe*, 145 Me. 71, 74.

There can be no doubt about the intentions expressed by Hathaway in her letter (Exhibit C – App. 59) (Restatement Second (Contracts) § 24 "an offer is manifestation of

willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it"). Hathaway confirmed the Agreement in note (Exhibit D – App. 60), her acceptance of Sarvis' withdrawal of his objection to the divorce, and later by her partial performance of the Agreement. Thus, the Agreement represents a valid contract between Sarvis and Hathaway.

2) The Agreement is Valid Even Though It Was Not Presented to the Divorce Court

Maine Law does not prevent divorcing parties making a settlement agreement outside of the court. Nor does it require a settlement agreement be merged or incorporated in the divorce decree. Nor does it state that such an agreement is invalid or unenforceable if it is not merged or incorporated in the divorce decree. Furthermore, Article 1, § 10 of the United States Constitution provides that "No state shall . . . pass any . . . Law impairing the Obligation of Contracts." *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819). Neither may the District Court nor this Court interpret Maine law so as to set aside or impair the enforceability of this Agreement without violating Sarvis' Constitutional rights.

While this Court has not addressed the validity and enforceability of a settlement agreement not presented to the divorce court or incorporated or merged into the divorce decree, those States and all authorities that have all agree:

> "[T]he agreement is valid even though not submitted to the divorce court for approval." (Emphasis added.) 24A Am Jur 2d § 1121 citing *In re Marrigae of Hasso*, 229 Cal App. 3d 1174, 280 Cal. Rptr. 919 (1st Dist. 1991), reh'g denied and opinion modified (May 30, 1991) and review denied, (Aug. 15, 1991); *Nelsen v. Vassenden*, 131 N.W. 794 (1911); *State ex rel. Green v. James*, 195 S.W.2d 669 (1946).

> "A property settlement agreement of the parties which is not incorporated and merged in the divorce decree remains in effect after the rendition of the decree, and the property rights of the parties remain contractual and enforceable as such." (Emphasis added.) C27 C.J.S. § 576.
>
> "The fact that the agreement is not embodied in the divorce decree . . . does not render it invalid . . ." (Emphasis added.) 24A AM Jur 2d § 1121.
>
> The "fact that the agreement has not been made a part of the permanent records of the court does not render them invalid." 24 Am Jur 2d § 1121.

Even though this Court has never ruled on this specific question it has held to those basic principles in *Coe* (*supra*) "There was no merger . . . the contract itself determines the property and other financial rights of the parties." (Emphasis added.). Furthermore, Maine Law states: " a valid [property] agreement of the parties" excludes that property from "marital property." 19 A.M.R.S. § 953 (2003). In *Wilks v. Wilks*, 1980 Me. Super. LEXIS 68 (See Addendum p. 11), in reliance on decisions of this Court in *Tibbets* and *Grishman* the Knox Superior Court said: "Of critical concern to the disposition of the property in this matter is the validity of the parties' agreement [Maine Law] excludes from 'marital property' that which is allocated pursuant to a valid agreement between the parties." See *Tibbetts v. Tibbits*, Me., 496 A.2d 70, 78 (1979) and *Grishman v. Grishman*, Me, 407 A.2d 9 (1979). Therefore, the divorce decree in this case could not have reached the Sarvis property because it was not marital property. In the face of a valid settlement agreement, as the Agreement surely is, the Divorce decree cannot override and set the Agreement aside.

Thus, the Agreement remains valid and enforceable even though it was not submitted to the Divorce Court or incorporated or merged into the divorce decree. . . .

{OMITTED SECTION}